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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/624,888

07/23/2003

Franz Enzmann

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JACOBSON HOLMAN PLLC
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WASHINGTON, DC 20004

EXAMINER

ROGERS, JAMES WILLIAM

ART UNIT

PAPER NUMBER

1618

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,888

Applicant(s)

ENZMANN, FRANZ

Examiner

James W. Rogers

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/14/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amended claims filed 7/23/2003 have been considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 6-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Nagley et al (US 5,981,601).

Nagley teaches a method for enhancing cellular bioenergy in which the therapeutic compositions comprise redox compounds (Ubiquinone Q₁₀ is specifically listed), various formulations are also discussed (including aerosol and spray) and the diseases treatable by the composition included hereditary optic neuropathy, Parkinson's disease and Alzheimers (which would also encompass treatment for a lack of concentration). See Abstract lin 1-2, col 3 lin 50-65, col 8 lin 14-16, lin 59-col 9 lin 6. Regarding claim 8 the effective amount of redox compound falls within the range cited by the applicants. See claim 8.

Claims 6-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Masterson et al (US 6,200,550 B1).

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Matherson teaches an oral care composition comprising high concentrations of Ubiquinone Q₁₀ in oral compositions (including solutions and emulsions) and delivery by mouth spray. See Abstract lin 1-4, 6, col 2 lin 17-20, col 4 lin 1-2, lin 44-48 and example 10. Regarding claim 8 while the authors are silent as to the amount of Ubiquinone Q₁₀ per dose it is assumed by the examiner that since the spray comprised 1 g altogether of Ubiquinone Q₁₀ each dose should fall between the broad range of 20-1000 mg.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masterson et al (US 6,200,550 B1) in further view of Nagley et al (US 5,981,601).

The Masterson patent teaches as described above.

Masterson does not teach a method of administering to a person in need for the diseases outlined in claims 9-11.

The Nagley patent teaches as described above.

It would have been obvious to combine the above documents because Matherson teaches an oral care composition comprising high concentrations of Ubiquinone Q₁₀ in oral compositions (including solutions and emulsions) and delivery by

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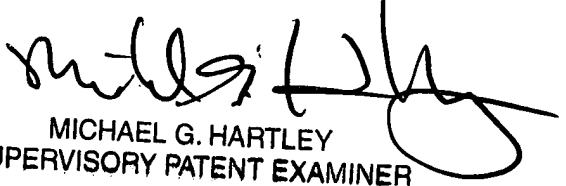
mouth spray while Nagley teaches therapeutic compositions comprising Ubiquinone Q₁₀, and the diseases treatable by the composition. The motivation to combine the above documents would be a mouth spray containing Ubiquinone Q₁₀ for the treatment of hereditary optic neuropathy, Parkinson's disease and Alzheimers.

Conclusion

No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James W. Rogers whose telephone number is (571) 272-7838. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER